No. 02-195

(2)

Supreme Court, U.S.
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In The
Supreme Court of the United States

TIBERIO P. DEJULIO and EVA C. GALAMBOS,

Petitioners,

v.

STATE OF GEORGIA, ROY E. BARNES, in his official capacity as the Governor of Georgia, MARK F. TAYLOR, in his official capacity as Lieutenant Governor of Georgia, THOMAS B. MURPHY, in his official capacity as Speaker of the House of Representatives of the State of Georgia, GEORGIA HOUSE OF REPRESENTATIVES, GEORGIA SENATE, FULTON COUNTY HOUSE DELEGATION, FULTON COUNTY SENATE DELEGATION, JAMES MCKINNEY, in his official capacity as Chairperson of the Fulton County House Delegation, DAVID SCOTT, in his official capacity as Chairperson of the Fulton County Senate Delegation, and Unknown 1-158 DOE COUNTY HOUSE AND SENATE DELEGATIONS,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF IN OPPOSITION FOR THE RESPONDENTS

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QUESTION PRESENTED

1.

Did the Court of Appeals correctly determine as a matter of fact and law that legislative representatives who make up "local delegations" in the Georgia General Assembly did not perform governmental functions and were not subject to the "one person, one vote" requirements of the Fourteenth Amendment?

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STATEMENT OF THE CASE

A. Course of the Proceedings

On February 2, 2000, Petitioners filed a complaint seeking declaratory and injunctive relief in the Northern District of Georgia. Petitioners claimed that certain legislative committees or delegations within the Georgia General Assembly were subject to the "one person, one vote" requirement recognized under the Fourteenth Amendment and that any changes in the rules of such internal legislative entities were subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended.

Respondents moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Petitioners amended their complaint, opposed the motion to dismiss and filed a motion for partial summary judgment. Respondents opposed the motion for partial summary judgment and, by order dated December 26, 2000, the district court converted the Respondents' original motion to dismiss into a motion for summary judgment.

On January 26, 2001 the district court entered its final order and judgment granting summary judgment to the Respondents on all grounds. *DeJulio v. Georgia,* 127 F. Supp. 2d 1274 (N.D. Ga. 2001) (Pet. App. at 28-85). The Court of Appeals originally denied and dismissed the case on the grounds of abstention. *DeJulio v. Georgia*, 276 F.3d 1244 (11th Cir. 2001) (Pet. App. at 13-27). However, on Petitioners' motion for rehearing, the original panel vacated its decision and affirmed the decision of the district court on its merits. *DeJulio v. Georgia*, 290 F.3d 1291 (11th Cir. 2002) (Pet. App. at 1-12).

Petitioners now seek review of the decision of the Court of Appeals solely on the "one person, one vote" issue, abandoning their Voting Rights Act claim. Additionally, while Petitioners make some allusion that they are arguing on behalf of "53 counties" out of Georgia's 159 counties (*See* Pet. at 5), the district court in fact found that Petitioners had standing only to raise claims regarding the operation of a single county's legislative delegation. *DeJulio*, 127 F. Supp. 2d at 1289, 1290 (Pet. App. at 55-56, 58-59). This is the posture of the case as it is presented to the Court for consideration.

B. Statement Of Facts

There are very few, if any, contested facts in this case, as demonstrated by the opinions of the district court and Court of Appeals below. *See DeJulio*, 290 F.3d at 1292-94 (Pet. App. 3-5); *DeJulio*, 127 F. Supp. 2d at 1280-81 (Pet. App. at 34-38). Those facts essentially show that the Georgia General Assembly has developed an internal method of managing the flow of legislation that deals only with a particular political subdivision such as a city or county. Legislators who represent any geographic territory within such a political subdivision are considered members of a "local delegation" for that subdivision. The "local delegation" then acts as a vehicle within the General Assembly for managing the presentation and consideration of legislation that affects only that political subdivision. *DeJulio*, 290 F. 3d at 1293-94 (Pet. App. at 3-5).

Contrary to the Petitioners' assertions that these local delegations somehow act as independent law-making bodies, both the district court and the Court of Appeals

made factual findings that this was not so. The Court of Appeals specifically found:

> [N]o final governmental authority is granted to the Georgia General Assembly's local delegations. The Georgia Constitution explicitly provides that the General Assembly *as a whole*, not specific local delegations, is the legislative authority for Georgia's counties and municipalities. (Emphasis in original.)

DeJulio, 290 F.3d at 1295 n. 9 (Pet. App. at 8-9, n. 9). *See also DeJulio* 127 F. Supp. 2d at 1281 (Pet. App. at 37-38). Additionally, while one legislator might choose not to oppose another legislator's local legislation, this decision is a matter of custom and courtesy and is not binding in any way on the actual enactment of laws. *DeJulio*, 290 F.3d at 1294 (Pet. App. at 4-5). As a factual matter, this custom and courtesy in no way transformed "local delegations" into separate law-making bodies. *Id.*

Further facts will be developed herein as is necessary to demonstrate the Respondents' position that this Petition for Writ of Certiorari should be denied.

REASONS FOR DENYING THE WRIT

A. THE COURT OF APPEALS CORRECTLY DETERMINED THAT LOCAL DELEGATIONS WITHIN THE GEORGIA GENERAL ASSEMBLY WERE NOT SUBJECT TO THE ONE PERSON, ONE VOTE REQUIREMENTS OF THE U.S. CONSTITUTION.

In rejecting the Petitioners' claims below and affirming the extensive opinion of the district court, the Court of

Appeals' clear and well-reasoned opinion evidences a correct interpretation of the law and demonstrates why this Petition for Writ of Certiorari should be denied. In attempting to argue to the contrary, the Petitioners misinterpret this Court's prior precedent and misapply it to the facts at hand.

The heart of the Petitioners' case is their claim that the "local delegations" within the Georgia General Assembly exercise governmental powers equivalent to those of a locally elected governmental body. Based on this assumption, repeatedly rejected below, the Petitioners then posit that the one person, one vote requirement as analyzed by this Court in *Hadley v. Junior College Dist.*, 397 U.S. 50 (1970), should apply to these local delegations so that each member of a local delegation should represent relatively the same number of persons. This argument was extensively addressed both by the district court and the Court of Appeals, both of which reached the identical conclusion that neither the facts nor the law warranted such a conclusion. *DeJulio*, 290 F.3d at 1294-97 (Pet. App. at 6-10); *DeJulio*, 127 F. Supp. 2d at 1294-99 (Pet. App. at 66-79).

In both of these opinions, this Court's decision in *Hadley* was correctly interpreted and applied. The Court of Appeals properly determined that:

> [U]nder Hadley, in order for the "one person, one vote" requirement to apply to the General Assembly's local delegations, Voters [the Petitioners] must show: (1) that the House and Senate delegations are selected by "popular election;" and (2) that these delegations perform "governmental functions."

DeJulio, 290 F.3d at 1295, *citing Hadley*, 397 U.S. at 56 (Pet. App. at 7). *See also DeJulio*, 127 F. Supp. 2d at 1294 (Pet. App. at 66-67). There is no question that individual members of the Georgia General Assembly are popularly elected. *Id.* Therefore, the only remaining inquiry for the courts below was whether these local delegations performed "governmental functions." *Id.*

In discussing this issue, the Court of Appeals noted that:

> The Supreme Court has recognized the following functions as governmental: the ability to "levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college . . ." appoint county officials, make contracts, establish and maintain a courthouse and jail, administer the county welfare system, perform duties in connection with elections, set the county tax rate, build roads and bridges, adopt the county budget, build and run hospitals, airports, and libraries, fix school district boundaries, establish a housing authority, and determine the election districts for county commissioners. (Internal citations omitted.)

DeJulio, 290 F. 3d at 1295 (Pet. App. at 7-8), *citing Hadley*, 397 U.S. at 53-54; *Avery v. Midland County*, 390 U.S. 474, 476-77 (1968). *See also DeJulio*, 127 F. Supp. 2d at 1295 (Pet. App. at 68-69). Because the "local delegations" of the Georgia General Assembly carry out none of these activities, the Petitioners were relegated to arguing that the delegations carried out "law making" functions which were

equivalent to "governmental functions" so that the delegations should be subject to the one person, one vote requirement.

Both the district court and the Court of Appeals made short work of this particular argument. After noting that no final governmental authority is granted to any of these local delegations, both courts recognized that as a matter of fact and law, the final authority to make law in the State of Georgia is vested and remains with the House, the Senate and the Governor. *DeJulio*, 290 F.3d at 1296 (Pet. App. at 8-10); *DeJulio*, 127 F. Supp. 2d at 1298-1300 (Pet. App. at 74-79). Given that no "governmental functions", including "law making", were vested in these legislative local delegations, the Court of Appeals correctly concluded that the one person, one vote requirement did not apply to the delegations.

This conclusion was not altered by the Petitioners' reliance on *Vander Linden v. Hodges*, 193 F.3d 268 (4th Cir. 1999), a challenge to the operation of "local delegations" in the South Carolina legislature where the delegations functioned very differently from Georgia. As the Court of Appeals noted below:

> [A]s the district court points out, Voters' [Petitioners here] ignore important relevant distinctions between the role of South Carolina's local legislative delegations and those of Georgia. The district court distinguishes Vander Linden by noting:
>
> A reading of the statutes at issue in Vander Linden shows that South Carolina's local legislative delegations performed local governmental functions either in lieu of or in concert with local governments, depending on the situation. The

> Statutes the Fourth Circuit cited in Vander Linden do not limit the role of South Carolina's local legislative delegations to consideration of local legislation. They instead broadly define the role of South Carolina's local legislative delegations in overseeing and approving local governments' general activities. Indeed most of these statutes provide that the local delegation, not the entire General Assembly, is the final authority . . .

DeJulio, 290 F.3d at 1295 n. 9, *quoting DeJulio*, 127 F. Supp. 2d at 1296-97 (Pet App. at 8, 71-72).

In fact, the local delegations in South Carolina were specifically responsible for a number of local government functions including:

1. making and/or recommending appointments to boards and commissions;

2. approving and/or recommending the expenditure of money allocated by the South Carolina General Assembly for highways, parks, recreation, tourism, and other matters;

3. approving the budgets of local school districts;

4. initiating referenda regarding the budgetary powers and the election of governing bodies for a special purpose in public service districts;

5. approving the reimbursement of expenses for county planning commissioners;

6. approving county planning commission contracts with architects, engineers, and other consultants;

7. altering or dividing school districts of counties;

8. reducing existing special school levies in counties and school districts; and

9. submitting grant applications for planning, development, and renovating park and recreation facilities.

DeJulio, 127 F. Supp. 2d at 1296, *citing Vander Linden*, 193 F.3d at 270-71 (Pet. App. at 69-70). In contrast, no such powers are provided under Georgia law to delegations of local legislators. *DeJulio*, 290 F.3d at 1295 n. 9; *DeJulio*, 127 F. Supp. 2d at 1297-98 (Pet. App. at 8-9, 73-74). These factual distinctions between the internal operations of the two States make the *Vander Linden* opinion inapposite to this case and the Petitioners' request for certiorari.

CONCLUSION

WHEREFORE, because the courts below have properly interpreted the law and this Court's precedent and because, as demonstrated by the opinions below, there is no factual basis for the Petitioners' claims the Respondents respectfully request this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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